

# Calendar No. 1066

91ST CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ No. 91-1061

## ELGIE L. TABOR

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JULY 30, 1970.—Ordered to be printed

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Mr. BURDICK, from the Committee on the Judiciary, submitted the following

### REPORT

[To accompany H.R. 9591]

The Committee on the Judiciary, to which was referred the bill (H.R. 9591) for the relief of Elgie L. Tabor, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to relieve Elgie L. Tabor of liability in the amount of \$2,499.22, representing overpayments of active duty pay as a member of the Army and Air Force in the period from January 20, 1943, through January 9, 1960, which resulted from an administrative error in crediting him with service in the Texas National Guard. The bill further provides for a refund of any amounts repaid or withheld by reason of the indebtedness.

#### STATEMENT

In its favorable report on the bill, the House Judiciary Committee set forth the facts of the case as follows:

The Department of the Air Force in a report on similar bills in the 90th Congress indicated that it would interpose no objection to the bills provided they were amended to provide for the relief as is now provided in H.R. 9591, as amended. The General Accounting Office indicated that it had no information justifying the finding of special equity in this case but stated that relief in this instance was a matter for determination by the Congress.

The history of Lt. Col. Elgie L. Tabor's service is outlined in the report of the Department of the Air Force.

Lieutenant Colonel Tabor enlisted in the U.S. Army July 21, 1942. He was discharged from this enlistment January 19, 1943, and the next day was commissioned a second lieutenant in the Army. He remained on extended active duty with the Army until his transfer to the inactive Air Reserve March 11, 1946. He was recalled to extended active duty until his retirement May 31, 1967. He is entitled to retired pay at the rate of \$643.20 a month.

Prior to his enlistment in the Army, Lieutenant Colonel Tabor was a member of the Texas National Guard. A statement of service issued by that organization October 10, 1944, showed he enlisted in the Field Artillery, Texas National Guard, January 6, 1931, and was discharged January 5, 1934. Based on this information, his pay date was established as July 21, 1939. His basic pay was computed on this pay date by the Air Force beginning the date he was recalled to extended active duty late in 1950. In 1955, the Air Force issued a statement of service for him showing he had enlisted service from January 6, 1931, through January 5, 1934, and from July 21, 1942, through January 19, 1943.

Late in 1966, in connection with his pending retirement, Lieutenant Colonel Tabor's military records were reviewed. During this review, the Texas National Guard informed the Air Force he had been discharged from that organization July 16, 1931. The Air Force requested further verification of this information in view of the October 10, 1944, statement of service which showed he had been discharged January 5, 1934. The Texas National Guard stated a search of its records verified that he had been discharged July 16, 1931, by Special Orders 181 of the Texas Adjutant General's Office. Further, a search of the records of the 131st Field Artillery revealed no record of service by Lieutenant Colonel Tabor during that organization's encampment the last of July and the first part of August 1931, or during any subsequent period. Based on this information, the Air Force established his correct pay date as January 10, 1942.

Lieutenant Colonel Tabor was advised of the change in his pay date and given an opportunity to provide information to substantiate service in the Texas National Guard after July 16, 1931. He was unable to provide such information and his application to have his records corrected to show he was discharged from the Texas National Guard January 5, 1934, was denied. On February 21, 1967, he was informed that from November 24, 1950, through January 9, 1960, he had received overpayments of basic pay totaling \$2,246.28 because of the incorrect pay date. An audit by the Army of payments made to him prior to this transfer to the inactive Air Reserve showed that from January 20, 1943, through March 11, 1946, he received overpayments totaling \$252.94. This increased the total overpayments received by him to \$2,499.22. Prior to his retirement May 31, 1967, he repaid \$746.28 leaving a balance of \$1,752.94.

The Department of the Air Force in its report to the committee indicated that in view of the particular circumstances of this case, it would have no objection to enactment of a bill granting Lieutenant Colonel Tabor relief from the liability for the indebtedness created in the manner outlined above. In this connection, the Department of the Air Force report stated:

"The erroneous statement of service issued by the Texas National Guard in October 1944 resulted in Lieutenant Colonel Tabor's pay date being established as July 21, 1939, instead of a correct pay date of January 10, 1942. The resulting overpayments appear to have been made and received in good faith, and they remained undetected for many years. There are no further administrative procedures under which Lieutenant Colonel Tabor may be relieved of his liability. Based upon the circumstances involved, the Department of the Air Force interposes no objection to enactment of H.R. 12501 or H.R. 16964."

The committee agrees that the circumstances of this case are such that legislative relief is merited. It is further clear that the only recourse open to this retired officer is to appeal to the Congress for relief. In view of the fact that the error occurred because of an erroneous certification by Texas National Guard authorities and that the error was undetected for many years, and the payments were received in good faith by the individual, the committee feels that it is inequitable to impose the requirement of repayment upon this retired officer. Accordingly, it is recommended that the bill be amended to include the correction suggested by the Air Force and that the amended bill be considered favorably.

The committee after a review of the foregoing, concurs in the action taken by the House of Representatives and recommends favorable consideration of H.R. 9591, without amendment.

Attached hereto and made a part hereof are (1) a letter dated November 20, 1968, from the Department of the Air Force, and (2) a letter dated May 16, 1968, from the Comptroller General.

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DEPARTMENT OF THE AIR FORCE,  
Washington, D.C., November 20, 1968.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Air Force with respect to H.R. 12501 and H.R. 16954, 90th Congress, bills "For the relief of Elgie L. Tabor."

H.R. 12501 and H.R. 16964, which are similar bills, would relieve Lt. Col. Elgie L. Tabor, U.S. Air Force (retired), FV 573538, of liability to repay to the United States the sums of \$2,246.28 and \$2,499.22, respectively. The bills state that these amounts represent overpayments of active duty pay received by him for the period ending November 25,

1966, through administrative error in crediting him with certain service in the Texas National Guard. H.R. 12501 and H.R. 16964 would authorize the Secretary of the Treasury to pay to Lieutenant Colonel Tabor the amount received or withheld from him because of the overpayments. Agent or attorney fees are limited to 10 percent of the bills.

Lieutenant Colonel Tabor enlisted in the U.S. Army July 21, 1942. He was discharged from this enlistment January 19, 1943, and the next day was commissioned a second lieutenant in the Army. He remained on extended active duty with the Army until his transfer to the inactive Air Reserve March 11, 1946. He was recalled to extended active duty until his retirement May 31, 1967. He is entitled to retired pay at the rate of \$643.20 a month.

Prior to his enlistment in the Army, Lieutenant Colonel Tabor was a member of the Texas National Guard. A statement of service issued by that organization October 10, 1944, showed he enlisted in the Field Artillery, Texas National Guard, January 6, 1931, and was discharged January 5, 1934. Based on this information, his pay date was established as July 21, 1939. His basic pay was computed on this pay date by the Air Force beginning the date he was recalled to extended active duty late in 1950. In 1955, the Air Force issued a statement of service for him showing he had enlisted service from January 6, 1931, through January 5, 1934, and from July 21, 1942, through January 19, 1943.

Late in 1966, in connection with his pending retirement, Lieutenant Colonel Tabor's military records were reviewed. During this review, the Texas National Guard informed the Air Force he had been discharged from that organization July 16, 1931. The Air Force requested further verification of this information in view of the October 10, 1944, statement of service which showed he had been discharged January 5, 1934. The Texas National Guard stated a search of its records verified that he had been discharged July 16, 1931, by Special Orders 181 of the Texas Adjutant General's Office. Further, a search of the records of the 131st Field Artillery revealed no record of service by Lieutenant Colonel Tabor during that organization's encampment the last of July and the first part of August 1931, or during any subsequent period. Based on this information, the Air Force established his correct pay date as January 10, 1942.

Lieutenant Colonel Tabor was advised of the change in his pay date and given an opportunity to provide information to substantiate service in the Texas National Guard after July 16, 1931. He was unable to provide such information and his application to have his records corrected to show he was discharged from the Texas National Guard January 5, 1934, was denied. On February 21, 1967, he was informed that from November 24, 1950, through January 9, 1960, he had received overpayments of basic pay totaling \$2,246.28 because of the incorrect pay date. An audit by the Army of payments made to him prior to his transfer to the inactive Air Reserve showed that from January 20, 1943, through March 11, 1946, he received overpayments totaling \$252.94. This increased the total overpayments received by him to \$2,499.22. Prior to his retirement May 31, 1967, he repaid \$746.28, leaving a balance of \$1,752.94.

The erroneous statement of service issued by the Texas National Guard in October 1944 resulted in Lieutenant Colonel Tabor's pay date being established as July 21, 1939, instead of a correct pay date of



January 10, 1942. The resulting overpayments appear to have been made and received in good faith, and they remained undetected for many years. There are no further administrative procedures under which Lieutenant Colonel Tabor may be relieved of his liability. Based upon the circumstances involved, the Department of the Air Force interposes no objection to enactment of H.R. 12501 or H.R. 16964.

If your committee favorably considers H.R. 12501, we recommend amending it to correct the amount of overpayment to \$2,499.22 and to show the period as being January 20, 1943, through January 9, 1960. Further, amendment is recommended to allow for credit in the accounts of any certifying or disbursing officer for amounts for which liability is relieved.

If your committee favorably considers H.R. 16964, we recommend amending it to show the period of overpayment as being January 20, 1943, through January 9, 1960. Further, amendment is recommended to allow for credit in the accounts of any certifying or disbursing officer for amounts for which liability is relieved.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

THOMAS H. NIELSEN,  
*Assistant Secretary of the Air Force.*

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COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., May 15, 1968.*

B-163987.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your letters of April 9, 1968, and May 8, 1968, requesting our views on H.R. 12501 and H.R. 16964. Both bills are for the relief of Elgie L. Tabor.

The bills differ only to the extent that H.R. 12501 (introduced Aug. 21, 1967) would relieve Lt. Col. Elgie L. Tabor, U.S. Air Force, retired, FV 573 538, of his liability to the United States in the amount of \$2,246.28, whereas H.R. 16964 (introduced May 1, 1968) would relieve the officer in the amount of \$2,499.22. The indebtedness represents overpayments of active duty pay received by him for the period ending November 25, 1966, as a result of administrative error in crediting him with certain service in the Texas National Guard. Also, the bill would authorize and direct the Secretary of the Treasury to pay to Colonel Tabor an amount equal to the sum of any amounts received or withheld from him on account of such overpayment.

Since, as noted below, Colonel Tabor's indebtedness was found to be in the amount of \$2,499.22, presumably H.R. 16964 is intended to take the place of H.R. 12501.

It appears from the records before us that Colonel Tabor served as an enlisted man in the Texas National Guard from January 6, 1931, to July 16, 1931, a period of 6 months and 11 days. He enlisted in the Army of the United States on July 21, 1942, and served on active duty

as an enlisted man and then as an officer in the Army of the United States from August 3, 1942, to March 11, 1946, when he was released to inactive duty. On March 12, 1946, the officer reverted to a Reserve status and thereafter served two 15-day periods of active duty for training, August 1 to 15, 1949, and July 31 to August 14, 1950. On November 24, 1950, he was recalled to extended active duty as an officer and he continued in that status until May 31, 1967, when he retired under the provisions of 10 U.S.C. 1201 by reason of physical disability effective June 1, 1967.

When the officer entered on extended active duty on November 24, 1950, he was erroneously credited, for longevity pay purposes, with service in the Texas National Guard from January 6, 1931, to January 5, 1934, a period of 3 years, when in fact his service in that status was from January 6, 1931, to July 16, 1931, a period of only 6 months and 11 days. This service was supported by a statement of service from the Adjutant General's Department, Austin, Tex., dated November 25, 1966. As a result of this erroneous credit, the officer was overpaid pay for the period November 24, 1950, to January 9, 1960.

On February 21, 1967, the Directorate of Quality Examination, AFAFC, issued a pay adjustment authorization, DD Form 139, to the accounting and finance officer at Kelly Air Force Base, Tex., Colonel Tabor's permanent station at that time, authorizing a charge of \$2,246.28 against the officer's pay account for overpayment (due to the use of an erroneous date) from November 24, 1950, through January 9, 1960. On January 10, 1960, the officer became entitled to pay at the rate prescribed for a major with over 18 years' service, the maximum pay of a major.

The amount of the overpayment, \$2,246.28, was entered for collection on the officer's military pay record which was closed March 31, 1967. When he was released from active duty on May 31, 1967, \$746.28 had been collected. A notation in his military pay record closed May 31, 1967, indicates that he requested that the balance of the indebtedness, \$1,500, be deducted from his retired pay at \$100 per month. However, it is reported that the files of the Retired Pay Division, Directorate of Allotments and Retired Pay, show that no deductions have been made from his retired pay.

In addition to the above overpayment, the Finance Center, U.S. Army, examined pay documents for the period of active duty from January 20, 1943, to March 11, 1946, and determined that the officer was paid \$252.94 during that period because of erroneous credit of service for longevity pay purposes. This amount increased the amount overpaid to \$2,499.22, the amount stated in H.R. 16964. It appears that Colonel Tabor has been advised of this additional overpayment.

The record further indicates that on April 4, 1968, the Deputy Assistant Secretary of the Air Force authorized suspension of collection action against Colonel Tabor until the 90th Congress considers H.R. 12501 (the bill then under consideration).

We do not view with favor legislation such as H.R. 16964 which grants preferential treatment to an individual over other individuals similarly situated. Other persons have been required to refund overpayments received because of erroneous pay entry base dates. On the record before us we find no special equity in Colonel Tabor's case which

would warrant our recommending favorable consideration of the bill. He knew that he had not served as a member of the Texas National Guard for 3 years and as a consequence he should have known that he was being credited with excess longevity when he received his first pay check after his recall to active duty in 1950. The question of whether relief should be granted in this case, however, is, of course, for determination by the Congress on the basis of the facts and circumstances presented.

If H.R. 16964 is to receive favorable consideration, we suggest that the period stated in the bill as ending "November 25, 1966" be changed to read "January 9, 1960" to conform with the record.

Sincerely yours,

FRANK H. WEITZEL,  
*Assistant Comptroller General of the United States.*

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